

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER 01-0227  
RESPONSIBLE OFFICER  
SALES TAX and WITHHOLDING TAX  
For Tax Periods: July 1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

**Issues**

**Sales and Withholding Tax**-Responsible Officer Liability

**Authority:** IC 6-2.5-9-3, IC 6-3-4-8 (f), IC 6-8.1-5-1 (b), Indiana Department of Revenue v. Safayan, 654 N.E. 2nd 270 (Ind.1995) at page 273:.

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales and withholding taxes.

**Statement of Facts**

On August 13, 1995, the taxpayer became president of three corporations that owned or managed restaurants. Prior to that time he was a shareholder in the companies. The corporations did not remit the proper amount of sales and withholding taxes to Indiana for the tax period 1994 through 1996. The Indiana Department of Revenue personally assessed those taxes against the taxpayer. He protested that assessment. A Letter of Findings, issued on November 11, 1999, found that the taxpayer "was not a responsible officer before August 13, 1995, and is not liable for sales and withholding tax owed by the companies prior to that date." On July 2, 2001, the Indiana Department of Revenue personally assessed the corporations' sales and withholding taxes for the July 1995 tax period against the taxpayer. Those taxes were due to the Indiana Department of Revenue on August 20, 1995. The taxpayer protested the assessments. Further facts will be provided as necessary.

**Sales and Withholding Tax**-Responsible Officer Liability

### **Discussion**

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that assessment is incorrect. IC 6-8.1-5-1 (b).

Pursuant to Indiana Department of Revenue v. Safayan 654 N.E. 2nd 270 (Ind.1995) at page 273: “The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid.” The previous Letter of Findings determined that the taxpayer became an officer with the duty to remit on August 13, 1995. The taxpayer agreed that he became president of the corporations and the books and financial records were delivered to him on that date. He contends, however, that he is not responsible for the July 1995 trust taxes since that is before the August 13, 1995 date when he became the president and had a duty to remit the taxes. The July 1995 tax returns were due to the Indiana Department of Revenue on August 20, 1995. The taxpayer was the officer who determined which bills would be paid on August 20, 1995. He chose not to remit the corporations’ trust taxes to the Indiana Department of Revenue. Therefore, the personal assessment against him for the July 1995 trust taxes is proper.

### **Finding**

The taxpayer’s protest is denied.